IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10840 of 1995
cr

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
J

2. To be referred to the Reporter or not? Yes
J

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? Yes

SABHAPATI,NAGAR PANCHAYAT KARAMSAD,AT PRESENT
Versus
AMRISH NATUBHAI

Appearance:
MR DC DAVE for Petitioner
MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA
Date of decision: 05/07/96
ORAL JUDGMENT ;

1. This Special Civil Application is directed against the order dated 15-9-95 passed by the Labour Court, Anand in Misc. Civil Application No.44 of 1993 read with the Award dated 6-8-93 passed in Reference No.434 of 1992. Nagar Panchayat, Karamsad became Municipal Borough by a Notification issued under the Gujarat Municipalities Act, 1963. The respondents-workmen had been appointed in the Nagar Panchayat, Karamsad. The respondents were working with the Nagar Panchayat as Clerks for a period of 4 to 6 years at the time when their services were terminated on 31-6-87. There is a dispute between the parties as to

whether the respondents were employees of Nagar Panchayat, Karamsad or whether they were working with a Contractor of Nagar Panchayat, Karamsad. On 15-4-94 the Nagar Panchayat, Karamsad became the Municipal Borough and it is the case of the Municipal Borough that the respondents had been employed by the Contractor of Nagar Panchayat, Karamsad and they were not the employees of Nagar Panchayat, Karamsad.

2. The respondents raised an industrial dispute against their termination dated 31-6-87 and the dispute was referred to the Labour Court, Nadiad and the same was subsequently decided by the Labour Court, Anand on 6-8-93 as Reference No.434 of 1992. The Labour Court, Anand while passing the Award dated 6-8-93 noted the case of the respondents-workmen that they had been working in the Octroi Department for a period of 4 to 6 years when they were terminated on 31-6-87 without following the relevant provisions of law and without giving any notice or notice pay. On behalf of the present petitioner no written statement was filed before the Labour Court despite the notices given by the Labour Court. The employer did not appear before the Labour Court despite several notices and no oral or documentary evidence was produced although they had been duly informed by the labour Court. The 8 respondents-workmen were examined before the Labour Court, but they were not cross-examined by the employer and in such circumstances the evidence led on behalf of the respondents-workmen was accepted by the Labour Court, including their statement that they were not gainfully employed after their termination and on that basis vide Award dated 6-8-93, the relief of reinstatement with continuity of service and full backwages was granted. Against this Award dated 6-8-93, an Application No.44 of 1993 was moved by Nagar Panchayat, Karamsad under Rules 26 and 26A of the Industrial Disputes Rules for setting aside the ex parte Award dated 6-8-93 and this Application was rejected by the order dated 15-9-95 passed by the Labour Court, Anand and now this Special Civil Application has been filed against the order dated 15-9-95 rejecting the Application for setting aside the ex parte Award as also against the Award dated 6-8-93.

3. The petitioner has come with the case that a lawyer had been engaged by them, but the lawyer did not appear in the proceedings before the Labour Court in which the Award dated 6-8-93 was passed and, therefore, the labour Court was not right in rejecting the Application for setting aside the ex parte Award. The Application should have been allowed and the matter should have been considered again in presence of both the

sides by the Labour Court.

4. When the matter came up before this Court, Mr. H. K. Rathod on behalf of the respondents had entered Caveat and Mr. Dave appearing for the petitioner placed reliance on a Supreme Court decision in the case of Rafiq v. Munshilal, reported in AIR 1981 SC 1400 wherein on account of the dismissal of an appeal for default of appellant's counsel, the Supreme Court directed to recover the cost from the appellant's counsel while holding that the party should not suffer for misdemeanor or inaction of the counsel. Mr. Rathod had cited JT 1993 (4) SC 528 (Salil Dutta v. T.M.& M.C. Private Ltd.) and tried to distinguish AIR 1981 SC 1400 (Supra). Whereas the question of issue of direction for recovery of the cost could not be considered in absence of concerned lawyer, Mr. Dave sought time to seek instructions from the petitioner as to whether it was ready to implead the concerned lawyer as respondent and to make a prayer in the petition so as to seek a direction as was given by the Supreme Court in Rafiq's case (Supra) and accordingly time was granted on 20-6-96 and the matter was posted for 1-7-96.

5. On 1-7-96 when the matter came up Mr.Dave stated that the petitioner was not ready to follow the course of action to implead the concerned lawyer as a party and to make a prayer for appropriate direction in accordance with the Supreme Court judgment reported in AIR 1981 SC 1400. On that day Rule was issued and the service was waived by Mr. Rathod, but during the course of the arguments a suggestion was made by Mr. Rathod that in case the respondents are reinstated and full salary is paid to them from 15-9-95 i.e. the date on which the Application for setting aside the ex parte Award was rejected till the date the respondents are taken back in service, the Court may consider the question with regard to the remand of the proceedings to the limited extent in respect of the relief of backwages. This suggestion was made by Mr. Rathod without prejudice to the merits of the case and since Mr. Dave wanted time to seek instructions for the above suggestion, time was granted and the matter was directed to be listed on 5-7-96 in the admission Board with the understanding that the matter shall be finally heard.

6. As regards the grievance, which is raised on behalf of the petitioner, that the Application for setting aside the ex parte Award should have been allowed because the petitioner can not be made to suffer in case its lawyer had not appeared, it may be straightaway

observed that repeated notices were given by the Labour Court and yet no care was taken to participate in the proceedings at any stage or to know as to what was going on in the proceedings. Neither the reply was filed nor the witnesses of the respondent-workmen were cross-examined nor anybody appeared at the time of argument although the matter had remained pending for number of years. The Labour Court while passing the order dated 15-9-95 has recorded that according to the record of the Reference as many as 6 notices Exh.4, Exh. 7, Exh. 10, Exh.13, Exh.16 and Exh.26 were given and the notices had been sent by Registered Post A.D. and every time the notices had been duly served. Thus it can be said that it is a case in which the party itself had also remained totally negligent and indifferent besides the question that the lawyer had not appeared in the proceedings. If the Registered notices were served upon the party itself, despite the fact that the lawyer had been engaged by it, the party itself should have taken appropriate steps to see as to what was going on in the proceedings for which the notices were being sent to them although they had engaged a lawyer. In such facts and circumstances, I do not find it to be a fit case in which it can be said that the Application for setting aside the ex parte Award had been wrongly rejected by the Labour Court. The Labour Court has passed an elaborate order and has dealt with all the aspects in detail while passing the order dated 15-9-95 so as to reject the Application for setting aside the ex parte Award and, therefore, that order, as such, is not required to be disturbed on the ground of the absence of the lawyer of the petitioner in the Reference proceedings. The Supreme Court's decision in Rafiq v. Munshilal (Supra) can't be of any help to the petitioner for twin reasons :

(i) The petitioner is not ready to implead the concerned lawyer as a party and to make a prayer to recover the cost from him and it is not possible for this court to pass any such orders without hearing the concerned lawyer and when the petitioner is not ready to implead the concerned lawyer as a party, I do not consider it necessary to issue a notice suo moto to the lawyer in the facts of this case.

(ii) It is not a simple case of lawyer's default but the petitioner's own negligence also - as it did not take care of the pending proceedings despite half a dozen notices served upon it. In Salil Dutta v. T.M. & M.C. Private Ltd. (Supra) after noticing earlier decision in Rafiq's

case,the Supreme Court has also held that putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which can not be accepted.

1996 (1) GLH 709 (Gujarat State Road Transport Corporation v. Shri P.D.Solanki) relied upon by Mr.Dave is not at all applicable to the facts of present case. In that case the GSRTC had handed over the entire record of enquiry (held against the driver facing serious charges) to the Advocate and yet the advocate did not produce it before the Labour Court and hence the Corporation was not at fault.

7. Whereas the Award dated 6-8-93 is also under challenge alongwith the order dated 15-9-95, whereby the Application for setting aside the ex parte Award was rejected, notwithstanding the order dated 15-9-95 being held to be correct, the validity of the Award dated 6-9-93 can still be gone into and, therefore, I considered the submissions made by Mr.Dave and Mr. Rathod on the validity of the award dated 6-8-93. The relief of reinstatement with continuity of service does not warrant any interference because, I find it to be clearly established that the provisions of S.25F of the Industrial Disputes Act had not been followed and the respondents had worked for at least such period so as to entitle them to the benefits under S.25F of the Industrial Disputes Act and whereas their services were terminated by oral orders without complying with the requirements of S.25F. Mr. Dave has also cited 1992(1) GLR 608 (Dinesh S. Parmar v. State) and AIR 1994 SC 1808 (J&K Public Service Commission v.Narinder Mohan). These cases are in relation to the question of confirmation of irregular appointees and regularisation of ad hoc appointees - with which the facts of this case have nothing to do. So far as the relief of full backwages is concerned, I find from the impugned Award dated 6-8-93 that full backwages have been granted only on the basis of the bald statement made by the respondents that they had remained unemployed after termination. I find that the Labour Court has not made any active application of mind while granting full backwages for a period over six years and so far as the entitlement to full backwages is concerned, the respondents had not discharged their full onus and it was certainly a matter in which the relief of full backwages could not be granted on a mere bald statement that they remained unemployed through-out more particularly when this period was a long period since 1987 and all the

respondents being eight in number were taken to have remained unemployed through-out.

8. Looking to the matter in its entirety, I find that the matter deserves to be remanded back to the Labour Court on the question of backwages. Whereas I have already held the reinstatement part of the Award to be in order and have also rejected the petitioner's prayer against the order dated 15-9-95 by which the Application for setting aside the ex parte Award has been rejected, the respondents are clearly entitled to get the benefits of the relief of reinstatement with continuity of service as was granted under the Award dated 6-8-93. Accordingly, part of the Award dated 6-8-93 with regard to the granting of the full backwages is hereby set aside and the matter is remanded back to the Labour Court to decide the question of backwages de novo after giving reasonable opportunity to both the sides to adduce evidence for this limited purpose i.e. backwages, subject to the condition that the respondents shall be reinstated in terms of the Award dated 6-8-93 with continuity of service and shall also be paid their due wages from the date of the Award till the date they are reinstated. The petitioner shall issue the reinstatement orders with regard to the respondents at the earliest possible opportunity, but in no case later than a period of four weeks from the date the certified copy of this order is served upon the petitioner and within another four weeks the due wages from 6-8-93 i.e. the date of the Award till the date of reinstatement shall also be paid. The Labour Court shall give preference to the remanded proceedings looking to the fact that it is an old matter and the question of backwages,for which the matter is remanded, shall be decided at the earliest, preferably within a period of six months.

9. Before parting with the Judgment,it may also be recorded that Mr. Dave had requested that he may be permitted to amend the petition and include the Labour Court as a party respondent and to amend the cause title accordingly. However, the matter has been heard and the Labour Court is a formal party and, therefore, I do not consider it necessary to allow this request for amendment.

10. In the end, Mr. Dave prayed that the operation of this order be stayed. I do not find any basis to stay this order as the respondents are already waiting for reinstatement since 6-8-93 and while holding the relief of reinstatement in their favour under the award, they

can not be kept high and dry - so as to go on suffering the litigation at the hands of petitioner - the trauma which they have already undergone for last number of years.

11. This Special Civil Application is accordingly allowed in part and the Rule is made absolute in the terms,as contained in para 8, as aforesaid. No order as to costs.

-0-